

## § 225.5

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accidents/incidents found in § 225.25(a) through (g) do not apply to—

(1) Railroads that operate or own track on the general railroad system of transportation that have 15 or fewer employees covered by the hours of service law (49 U.S.C. 21101–21107) and

(2) Railroads that operate or own track exclusively off the general system.

(d) All requirements in this part to record or report an injury or illness incurred by any classification of person that results from a non-train incident do not apply to railroads that operate or own track exclusively off the general railroad system of transportation, unless the non-train incident involves in-service on-track equipment.

[61 FR 30967, June 18, 1996, as amended at 61 FR 67490, Dec. 23, 1996; 75 FR 68903, Nov. 9, 2010]

### § 225.5 Definitions.

As used in this part—

*Accident/incident* means:

(1) Any impact between railroad on-track equipment and a highway user at a highway-rail grade crossing. The term “highway user” includes automobiles, buses, trucks, motorcycles, bicycles, farm vehicles, pedestrians, and all other modes of surface transportation motorized and un-motorized;

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed;

(3) Each death, injury, or occupational illness that is a new case and meets the general reporting criteria listed in § 225.19(d)(1) through (d)(6) if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The event or exposure arising from the operation of a railroad need only be one of the discernable causes; it need not be the sole or predominant cause.

(4) Occupational illness.

*Accountable injury or illness* means any abnormal condition or disorder of

a railroad employee that causes or requires the railroad employee to be examined or treated by a qualified health care professional, regardless of whether or not it meets the general reporting criteria listed in § 225.19(d)(1) through (d)(6), and the railroad employee claims that, or the railroad otherwise has knowledge that, an event or exposure arising from the operation of the railroad is a discernable cause of the abnormal condition or disorder.

*Accountable rail equipment accident/incident* means

(1) Any derailment regardless of whether or not it causes any damage or

(2) Any collision, highway-rail grade crossing accident/incident, obstruction accident, other impact, fire or violent rupture, explosion-detonation, act of God, or other accident/incident involving the operation of railroad on-track equipment (standing or moving) that results in damage to the railroad on-track equipment (standing or moving), signals, track, track structures or roadbed and that damage impairs the functioning or safety of the railroad on-track equipment (standing or moving), signals, track, track structures or roadbed.

*Covered data* means information that must be reported to FRA under this part concerning a railroad employee injury or illness case that is reportable exclusively because a physician or other licensed health care professional—

(1) Recommended in writing that—

(i) The employee take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness,

(ii) The employee work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no days of restricted work activity in connection with the injury or illness, or

(iii) The employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the

employee actually takes the medication; or

(2) Made a one-time topical application of a prescription-strength medication to the employee's injury.

*Day away from work* means a day away from work as described in paragraph (1) of this definition or, if paragraph (1) does not apply, a day away from work solely for reporting purposes as described in paragraph (2) of this definition. For purposes of this definition, the count of days includes all calendar days, regardless of whether the employee would normally be scheduled to work on those days (*e.g.*, weekend days, holidays, rest days, and vacation days), and begins on the first calendar day after the railroad employee has been examined by a physician or other licensed health care professional (PLHCP) and diagnosed with a work-related injury or illness. In particular, the term means—

(1) Each calendar day that the employee, for reasons associated with his or her condition, does not report to work (or would have been unable to report had he or she been scheduled) if not reporting results from:

(i) A PLHCP's written recommendation not to work, or

(ii) A railroad's instructions not to work, if the injury or illness is otherwise reportable; or

(2) A minimum of one calendar day if a PLHCP, for reasons associated with the employee's condition, recommends in writing that the employee take one or more days away from work, but the employee instead reports to work (or would have reported had he or she been scheduled). This paragraph is intended to take into account "covered data" cases and also those non-covered data cases that are independently reportable for some other reason (*e.g.*, "medical treatment" or "day of restricted work activity"). The requirement to report "a minimum of one calendar day" is intended to give a railroad the discretion to report up to the total number of days recommended by the PLHCP.

*Day of restricted work activity* means a day of restricted work activity as described in paragraph (1) of this definition or, if paragraph (1) does not apply, a day of restricted work activity solely for reporting purposes as described in

paragraph (2) of this definition; in both cases, the work restriction must affect one or more of the employee's routine job functions (*i.e.*, those work activities regularly performed at least once per week) or prevent the employee from working the full workday that he or she would otherwise have worked. For purposes of this definition, the count of days includes all calendar days, regardless of whether the employee would normally be scheduled to work on those days (*e.g.*, weekend days, holidays, rest days, and vacation days), and begins on the first calendar day after the railroad employee has been examined by a physician or other licensed health care professional (PLHCP) and diagnosed with a work-related injury or illness. In particular, the term means—

(1) Each calendar day that the employee, for reasons associated with his or her condition, works restricted duty (or would have worked restricted duty had he or she been scheduled) if the restriction results from:

(i) A PLHCP's written recommendation to work restricted duty, or

(ii) A railroad's instructions to work restricted duty, if the injury or illness is otherwise reportable; or

(2) A minimum of one calendar day if a PLHCP, for reasons associated with the employee's condition, recommends in writing that the employee work restricted duty for one or more days, but the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled). This paragraph is intended to take into account "covered data" cases and also those non-covered data cases that are independently reportable for some other reason (*e.g.*, "medical treatment" or "day of restricted work activity"). The requirement to report "a minimum of one calendar day" is intended to give a railroad the discretion to report up to the total number of days recommended by the PLHCP.

*Discernable cause* means a causal factor capable of being recognized by the senses or the understanding. An event or exposure arising from the operation of a railroad is a discernable cause of (*i.e.*, discernably caused) an injury or illness if, considering the circumstances, it is more likely than not

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that the event or exposure is a cause of the injury or illness. The event or exposure arising from the operation of a railroad need not be a sole, predominant or significant cause of the injury or illness, so long as it is a cause (*i.e.*, a contributing factor).

*Employee human factor* includes any of the accident causes signified by the train accident cause codes listed under “Train Operation—Human Factors” in the current “FRA Guide for Preparing Accidents/Incidents Reports,” except for those train accident cause codes pertaining to non-railroad workers. For purposes of this definition “employee” includes the classifications of Worker on Duty—Employee, Employee not on Duty, Worker on Duty—Contractor, and Worker on Duty—Volunteer.

*Establishment* means a single physical location where workers report to work, where railroad business is conducted, or where services or operations are performed. Examples are: a division office, general office, repair or maintenance facility, major switching yard or terminal. For employees who are engaged in dispersed operations, such as signal or track maintenance workers, an “establishment” is typically a location where work assignments are initially made and oversight responsibility exists, *e.g.*, the establishment where the signal supervisor or roadmaster is located.

*Event or exposure* includes an incident, activity, or occurrence.

*Event or exposure arising from the operation of a railroad* means—

(1) With respect to a person who is not an employee of the railroad:

(i) A person who is on property owned, leased, maintained or operated by the railroad, an event or exposure that is related to the performance of the railroad’s rail transportation business; or

(ii) A person who is not on property owned, leased, maintained or operated over by the railroad, an event or exposure directly resulting from one or more of the following railroad operations:

(A) A train accident or a train incident involving the railroad; or

(B) A release of a hazardous material from a railcar in the possession of the

railroad or of another dangerous commodity that is related to the performance of the railroad’s rail transportation business.

(2) With respect to a person who is an employee of the railroad, an event or exposure that is work-related.

*FRA representative* means the Associate Administrator for Safety, FRA; the Associate Administrator’s delegate (including a qualified State inspector acting under part 212 of this chapter); the Chief Counsel, FRA; or the Chief Counsel’s delegate.

*General reporting criteria* means the criteria listed in § 225.19(d)(1) through (6).

*Highway-rail grade crossing* means:

(1) A location where a public highway, road, or street, or a private roadway, including associated sidewalks, crosses one or more railroad tracks at grade; or

(2) A location where a pathway explicitly authorized by a public authority or a railroad carrier that is dedicated for the use of non-vehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad tracks at grade. The term “sidewalk” means that portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line or, on easements of private property, that portion of a street that is paved or improved and intended for use by pedestrians.

*Injury or illness* means an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as but not limited to, a skin disease, respiratory disorder, or poisoning. A musculoskeletal disorder is also an injury or illness. Pain is an injury or illness when it is sufficiently severe to meet the general reporting criteria listed in § 225.19(d)(1) through (6).

*Joint operations* means rail operations conducted on a track used jointly or in common by two or more railroads subject to this part or operation of a train, locomotive, car, or other on-track equipment by one railroad over the track of another railroad.

*Medical removal* means medical removal under the medical surveillance requirements of the Occupational Safety and Health Administration standard in 29 CFR part 1910 in effect during calendar year 2002, even if the case does not meet one of the general reporting criteria.

*Medical treatment* means any medical care or treatment beyond “first aid” regardless of who provides such treatment. Medical treatment does not include diagnostic procedures, such as X-rays and drawing blood samples. Medical treatment also does *not* include counseling.

*Musculoskeletal disorder (MSD)* means a disorder of the muscles, nerves, tendons, ligaments, joints, cartilage, and spinal discs. The term does not include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain’s disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud’s phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

*Needlestick or sharps injury* means a cut, laceration, puncture, or scratch from a needle or other sharp object that involves contamination with another person’s blood or other potentially infectious material, even if the case does not meet one of the general reporting criteria.

*New case* means a case in which either the injured or ill person has not previously experienced a reported injury or illness of the same type that affects the same part of the body, or the injured or ill person previously experienced a reported injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and/or symptoms disappeared) from the previous injury or illness, and an event or exposure arising from the operation of a railroad discernably caused the signs and/or symptoms to reappear.

*Non-train incident* means an event that results in a reportable casualty, but does not involve the movement of on-track equipment nor cause reportable damage above the threshold established for train accidents.

*Occupational hearing loss* means a diagnosis of occupational hearing loss by a physician or other licensed health care professional, where the employee’s audiogram reveals a work-related Standard Threshold Shift (STS) (*i.e.*, at least a 10-decibel change in hearing threshold, relative to the baseline audiogram for that employee) in hearing in one or both ears, and the employee’s total hearing level is 25 decibels or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS.

*Occupational illness* means any abnormal condition or disorder, as diagnosed by a physician or other licensed health care professional, of any person who falls under the definition for the classification of Worker on Duty—Employee, other than one resulting from injury, discernably caused by an environmental factor associated with the person’s railroad employment, including, but not limited to, acute or chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact.

*Occupational tuberculosis* means the occupational exposure of an employee to anyone with a known case of active tuberculosis if the employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, even if the case does not meet one of the general reporting criteria.

*Privacy concern case* is any occupational injury or illness in the following list:

- (1) Any injury or illness to an intimate body part or the reproductive system;
- (2) An injury or illness resulting from a sexual assault;
- (3) Mental illnesses;
- (4) HIV infection, hepatitis, or tuberculosis;
- (5) Needlestick and sharps injuries; and
- (6) Other injuries or illnesses, if the employee independently and voluntarily requests in writing to the railroad reporting officer that his or her injury or illness not be posted.

*Person* includes all categories of entities covered under 1 U.S.C. 1, including, but not limited to, a railroad; any

manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any passenger; any trespasser or nontrespasser; any independent contractor providing goods or services to a railroad; any volunteer providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

*Qualified health care professional* is a health care professional operating within the scope of his or her license, registration, or certification. In addition to licensed physicians, the term includes members of other occupations associated with patient care and treatment such as chiropractors, podiatrists, physicians assistants, psychologists, and dentists.

*Railroad* means a railroad carrier.

*Railroad carrier* means a person providing railroad transportation.

*Railroad transportation* means any form of non-highway ground transportation that run on rails or electromagnetic guideways, including commuter or other short-haul railroad passenger service in a metropolitan or suburban area, as well as any commuter railroad service that was operated by the Consolidated Rail Corporation as of January 1, 1979, and high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

*Significant aggravation of a pre-existing injury or illness* means aggravation of a pre-existing injury or illness that is discernably caused by an event or exposure arising from the operation of a railroad that results in:

(1) With respect to any person:

(i) Death, provided that the pre-existing injury or illness would likely not have resulted in death but for the event or exposure;

(ii) Loss of consciousness, provided that the pre-existing injury or illness would likely not have resulted in loss of consciousness but for the event or exposure; or

(iii) Medical treatment in a case where no medical treatment was needed for the injury or illness before the event or exposure, or a change in the course of medical treatment that was being provided before the event or exposure.

(2) With respect to a railroad employee, one or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the event or exposure.

*Significant change in the damage costs for reportable rail equipment accidents/incidents* means at least a ten-percent variance between the damage amount reported to FRA and current cost figures.

*Significant change in the number of reportable days away from work or days restricted* means at least a ten-percent variance in the number of actual reportable days away from work or days restricted compared to the number of days already reported.

*Significant illness* means an illness involving cancer or a chronic irreversible disease such as byssinosis or silicosis, if the disease does not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

*Significant injury* means an injury involving a fractured or cracked bone or a punctured eardrum, if the injury does not result in death, a day away from work, restricted work, job transfer, medical treatment, or loss of consciousness.

*Suicide data* means data regarding the death of an individual due to the individual's commission of suicide as determined by a coroner, public police officer or other public authority or injury to an individual due to that individual's attempted commission of suicide as determined by a public police office or other public authority. Only the death of, or injury to, the individual who committed the suicidal act is suicide data. Therefore, casualties to a person caused by the suicidal act of another person are not considered suicide data.

*Train accident* means any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing

or moving) that results in damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.

*Train incident* means any event involving the movement of on-track equipment that results in a reportable casualty but does not cause reportable damage above the current threshold established for train accidents.

*Work environment* means the establishment and other locations where one or more railroad employees are working or present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials processed or used by an employee during the course of his or her work, and activities of a railroad employee associated with his or her work, whether on or off the railroad's property.

*Work-related* means related to an event or exposure occurring within the work environment. An injury or illness is presumed work-related if an event or exposure occurring in the work environment is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The causal event or exposure need not be peculiarly occupational so long as it occurs at work. For example, a causal event or exposure may be outside the employer's control, such as a lightning strike; involve activities that occur at work but are not directly productive, such as horseplay; or involve activities that are not peculiar to work, such as walking on a level floor, bending down, climbing stairs or sneezing. Such activities, along with other normal body movements, are considered events. So long as the event or exposure occurred at work and is a discernable cause of the injury or illness, the injury or illness is work-related. It does not matter whether there are other or bigger causes as well, or that the activity at work is no different from actions performed outside work. If an injury is within the presumption of work-relatedness, the employer can rebut work-relatedness only by showing that the case falls within an exception listed in § 225.15. In cases where it is not obvious whether a precipitating event or expo-

sure occurred at work or outside work, the employer must evaluate the employee's work duties and environment and decide whether it is more likely than not that an event or exposure at work was at least one of the causes of the injury of the injury or illness.

[61 FR 30968, June 18, 1996, as amended at 61 FR 59371, Nov. 22, 1996; 61 FR 67490, Dec. 23, 1996; 68 FR 10136, Mar. 3, 2003; 75 FR 68903, Nov. 9, 2010; 76 FR 30863, May 27, 2011]

#### § 225.6 Consolidated reporting.

A parent corporation may request in writing that FRA treat its commonly controlled railroad carriers, which operate as a single, seamless, integrated United States rail system, as a single railroad carrier for purposes of this part.

(a) The written request must include the following:

(1) A list of the subsidiary railroads controlled by the parent corporation; and

(2) An explanation as to how the subsidiary railroads operate as a single, seamless, integrated United States railroad system.

(b) The request must be sent to the FRA Docket Clerk, Federal Railroad Administration, U.S. Department of Transportation, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W31-109, 1200 New Jersey Avenue, SE., Washington, DC 20590. Each request received shall be acknowledged in writing. The acknowledgment shall contain the docket number assigned to the request and state the date the request was received.

(c) FRA will notify the applicant parent corporation of the agency's decision within 90 days of receipt of the application.

(d) If FRA approves the request, the parent corporation must enter into a written agreement with FRA specifying which subsidiaries are included in its railroad system, agreeing to assume responsibility for compliance with this part for all named subsidiaries making up the system, and consenting to guarantee any monetary penalty assessments or other liabilities owed to the United States government that are incurred by the named subsidiaries for violating Federal accident/incident reporting requirements. Any change in